

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Jurisdictional Separations and Referral to the Federal-State Joint Board)	CC Docket No. 80-286
)	
)	

COMMENTS OF CENTURYLINK AND QWEST

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INTRODUCTION AND SUMMARY

The Commission has issued a notice of proposed rulemaking,¹ seeking comment on its proposal to extend until June 30, 2012, the current freeze of Part 36 category relationships and jurisdictional cost allocations factors.²

CenturyLink and Qwest³ jointly support the Commission's call to again extend the freeze for 2011. The Commission, however, would be wiser to extend the freeze indefinitely, or until such time as separations reform is completed. If the Commission

¹ Notice of Proposed Rulemaking, FCC 11-34 (rel. Mar. 1, 2011) ("NPRM"). The NPRM was published in the Federal Register on March 14, 2011. 76 Fed. Reg. 13,576 (Mar. 14, 2011).

² The separations requirements are codified at 47 C.F.R. §§ 36.1-36.507.

³ CenturyLink and Qwest file these comments jointly as separate companies. As the Commission is well aware, the companies anticipate merging shortly. The proposed merger of CenturyLink and Qwest was approved by the Commission on March 18, 2011. *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, FCC 11-47 (rel. Mar. 18, 2011).

believes a specific deadline is necessary, it should extend the freeze for three years or until comprehensive reform is completed, whichever comes first, as it did in 2006.⁴

Extending the freeze is plainly warranted. The Commission has four times before found a five-, three-, or one-year freeze to be appropriate for incumbent local exchange carriers (“ILECs”), and the same reasoning applies today. The Commission recognized that maintaining the status quo would allow the Commission to complete comprehensive reform -- including separations reform or even comprehensive reform of intercarrier compensation and universal service. Judging from the National Broadband Plan,⁵ the outcome of reforms is likely to end any ostensible need for separations processes.

In the meantime, failing to extend the freeze would be -- as the Commission recognized in 2001, 2006, 2009, and again last year -- expensive, a waste of resources, and unduly and unreasonably burdensome to carriers. It would create uncertainty and instability that would discourage network and broadband investment at a time when the nation most needs it.

I. THE COMMISSION SHOULD EXTEND THE FREEZE INDEFINITELY.

While CenturyLink and Qwest believe the Commission ordinarily could complete separations reform within one year, unquestionably it would be wiser to allow additional time. Separations reform is not a critical issue, and it has become increasingly unimportant as fewer and fewer ILEC access lines are subject to federal rate of return regulation. Carriers representing the vast majority of ILEC lines nationwide today are

⁴ The freeze was last extended in May 2010. *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd. 6046 (2010) (“2010 Order”).

⁵ *Connecting America: The National Broadband Plan* (Mar. 16, 2010). *See also* News Release: “FCC Announces Broadband Action Agenda” (rel. Apr. 8, 2010).

governed by price cap regulation. In addition to AT&T, Qwest, and Verizon -- price cap ILECs that are no longer subject to interstate separations requirements -- other carriers that are wholly price cap regulated by the Commission include ACS, Cincinnati Bell, Consolidated, FairPoint, Frontier, Hawaiian Telecom, Iowa Telecom (now part of Windstream), Puerto Rico Telecom, Virgin Islands Telephone, and Windstream.⁶ CenturyLink is price cap regulated at the federal level for all but a very tiny handful of its access lines.⁷ As a Bell Operating Company, Qwest is wholly price-cap regulated.

The Commission has many important issues on its agenda over the next year. Obviously, those include comprehensive reform of intercarrier compensation and high cost universal service as part of the implementation of the National Broadband Plan.⁸ These and other reforms contemplated in the National Broadband Plan will make separations all the more obsolete for all carriers. The plan envisions moving to unified interstate and intrastate access rates, after a transition. The mechanisms for universal

⁶ The Commission most recently granted petitions of Virgin Islands Telephone, FairPoint, and Windstream. *Petition of Virgin Islands Tel. Corp. for Election of Price cap Regulation and Limited Waiver of Pricing and Universal Service Rules; China Tel. Co., FairPoint Vermont, Inc., Maine Tel. Co., Northland Tel. Co. of Maine, Inc., Sidney Tel. Co., and Standish Telephone Co. Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Windstream Petition for Limited Waiver Relief*, WC Docket Nos. 10-39, 10-47, and 10-55, Order, DA 10-802 (rel. May 10, 2010).

⁷ CenturyLink completed the conversion of the virtually all of its federal rate-of-return companies to price cap regulation in 2009. CenturyLink's ILECs all operate under price cap regulation at the federal level, except for three average schedule companies, which together account for just 0.09% of CenturyLink's total access lines.

⁸ *Connect America Fund; A National Broadband Plan for our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, CC Docket Nos. 96-45 and 01-92, GN Docket No. 09-51, and WC Docket Nos. 03-109, 05-337, 07-135, and 10-90, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) ("*Universal Service/Intercarrier Compensation NPRM*"). The notice was published in the Federal Register on March 2, 2011. 76 Fed. Reg. 11,632 (Mar. 2, 2011).

service high cost support -- including ICLS, IAS, and LSS -- are all tied to the access charge regime. Thus, even for ILECs still under cost-based regulation, rulemakings under the plan will directly affect carrier revenues and allocation.

The Joint Board has been reviewing interim and comprehensive separations reform, but has not completed its review, likely in part because of uncertainty about comprehensive universal service and intercarrier compensation reform. Last year, the State Members of the Joint Board did issue and request comment on a reform proposal, and the Joint Board itself held a roundtable meeting with consumer, industry, and state commission representatives.⁹ As the Commission itself recognizes, however, “it is unlikely that the Commission could implement any reform prior to June 30, 2011, when the current freeze expires.”¹⁰

If the Commission failed to extend the freeze by June 30, 2011, “incumbent LECs would be required to reinstitute their separations processes that have not been used since the inception of the freeze almost ten years ago,”¹¹ with plainly insufficient time to prepare and imposing a clearly unreasonable burden.

⁹ *Federal-State Joint Board on Jurisdictional Separations Announces September 24, 2010 Meeting and Roundtable Discussion of Jurisdictional Separations Reform*, CC Docket No. 80-286, Public Notice, 25 FCC Rcd 13245 (2010). *Federal-State Joint Board on Separations Seeks Comment on Proposal for Interim Adjustments to Jurisdictional Separations Allocation Factors and Category Relationships Pending Comprehensive Reform and Seeks Comment on Comprehensive Reform*, CC Docket No. 80-286, Public Notice, 25 FCC Rcd 3336 (Fed.-State Jt. Bd. 2010).

¹⁰ NPRM at ¶ 11.

¹¹ *Id.* at ¶ 10.

All of the reasons for granting a one-year freeze apply equally to an indefinite one.¹² If reform is completed earlier for all ILECs -- or if the Commission makes significant progress on comprehensive intercarrier compensation and universal service reforms in the rulemaking begun in the *Universal Service/Intercarrier Compensation NPRM* -- an indefinite freeze will have cost nothing. The Commission can take steps to lift the freeze in the future whenever separations reform is completed, assuming that is ever necessary. In the meantime, allowing the freeze to expire on June 30, 2011 would be a startling departure from Commission policy and impose essentially needless administrative costs and burdens.

II. THE COMMISSION HAS ALREADY FOUND THE SEPARATIONS FREEZE IS WARRANTED FOR ALL ILECS.

A. The Commission and the Joint Board recognized a decade ago that the separations requirements are obsolete.

The Commission began a proceeding on comprehensive separations reform more than ten years ago. It recognized, in the *1997 NPRM*, that “legislative, technological and market changes likely warranted comprehensive reform of the separations process, noting that the current network infrastructure is vastly different from the network and services used to define the cost categories appearing in the Commission’s current Part 36 rules.”¹³ In 1998, the Joint Board proposed freezing jurisdictional separations.¹⁴ In 2000, the Joint

¹² The Commission considered adopting an indefinite freeze in 2010, but ultimately deferred the issue for a later time. *2010 Order* at ¶ 12.

¹³ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120 at ¶¶ 9-19 (1997); *NPRM* at ¶ 2.

¹⁴ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, State Members Report on Comprehensive Review of Separations (filed Dec. 21, 1998).

Board recommended that, until comprehensive reform could be undertaken and completed, the Commission freeze Part 36 category relationships and jurisdictional allocation factors for price cap ILECs and allocation factors for rate of return ILECs.¹⁵

B. In 2001, the Commission found the separations freeze appropriate and in the public interest.

In 2001, after soliciting and assessing public comment, the Commission adopted the Joint Board's recommendation.¹⁶ The Commission imposed a freeze on the Part 36 category relationships and jurisdictional cost allocation factors, until such time as comprehensive reform of the separations rules could be completed.

The Commission concluded that freezing the factors “would provide stability and regulatory certainty for incumbent LECs by minimizing any impacts on separations results that might occur as a result of circumstances not contemplated by the Commission's Part 36 rules.”¹⁷ This included, notably, “growth in local competition and new technologies.”¹⁸ The Commission also found that a freeze would reduce regulatory burdens on incumbent LECs during the transition from a regulated monopoly to a deregulated, competitive environment in the local telecommunications marketplace.¹⁹ The Commission also recognized that competitive LECs and other ILEC competitors have no comparable requirements. Adopting a freeze would “further the Commission's

¹⁵ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Recommended Decision, 15 FCC Rcd 13160 (2000).

¹⁶ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 at ¶ 9 (2001) (“2001 Order”).

¹⁷ 2001 Order at ¶ 9.

¹⁸ *Id.* at ¶ 12; NPRM at ¶ 6.

¹⁹ 2001 Order at ¶ 12; NPRM at ¶ 6.

goal of achieving greater competitive neutrality during the transition to a competitive marketplace by simplifying the separations process for those carriers subject to Part 36.”²⁰

With Part 36 category relationships and allocation factors frozen, the Commission ensured that ILECs were not required to conduct the tedious and expensive separations studies otherwise necessary to calculate separations results. The Commission set this freeze for five years, but even at the outset it suggested it might be extended well beyond that term, depending on “whether, and to what extent, comprehensive reform of separations has been undertaken by that time.”²¹

C. In 2006, 2009, and 2010, the Commission found it appropriate and in the public interest to extend the separations freeze.

In 2006, the Commission extended the freeze another three years.²² It found that more time was needed to study comprehensive reform, including assessing Joint Board and industry filings. Among the proposals before the Commission was elimination of the separations requirements for price cap carriers.

The Commission found that its 2001 analysis remained wholly applicable in 2006. It concluded that “the facts support maintaining the status quo,” and that “[a]llowing the separations process to revert to the pre-freeze rules would create undue instability and administrative burdens while the Commission is considering comprehensive separations

²⁰ 2001 Order at ¶ 13; NPRM at n.17.

²¹ 2001 Order at ¶ 29; NPRM at ¶ 7.

²² *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516 at ¶¶ 1, 16 (2006) (“2006 FNPRM”).

reform.”²³ The Commission also concluded it had ample authority to preserve the status quo to ensure its ongoing reform effort goals would not be frustrated.²⁴ Ultimately, the Commission found extending the jurisdictional separations freeze for an additional three years was a reasonable way to handle the jurisdictional apportionment of ILEC costs.

In 2009, the Commission extended the freeze for an additional year. As in 2006, it recognized that extending the freeze was in the public interest. It again concluded that letting the old rules be re-imposed would create instability and burdens that could not be justified. Without the extension, carriers would have to reinstitute many separations functions when they may “no longer have the necessary employees and systems in place to comply with the old jurisdictional separations process.”²⁵ At the same time, the Commission found, “comprehensive reform could render the pre-freeze separations rules obsolete” anyway.²⁶ “To require carriers to reinstitute their separations systems, including personnel and computing resources, ‘would be unduly burdensome ... when there is significant likelihood that there would be no lasting benefit to doing so.’”²⁷

Last year, the Commission again reached the very same conclusion, for the same reasons.²⁸

²³ *Id.* at ¶¶ 19-23.

²⁴ *See MCI v. FCC*, 750 F.2d 135, 141 (D.C. Cir. 1984) (“Substantial deference must be accorded to any agency when it acts to maintain the status quo so that the objectives of a pending rulemaking proceeding will not be frustrated.”).

²⁵ *2009 Report and Order* at ¶ 12.

²⁶ *Id.*

²⁷ *Id.*, quoting *2006 FNPRM* at ¶ 23.

²⁸ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 6046 (2010) (“*2010 Order*”).

D. The same reasoning is even more compelling to extend the freeze today.

The Commission's reasoning for the freeze in 2001, 2006, 2009, and 2010 remains equally compelling today, just as the NPRM's tentative conclusion suggests.²⁹ A one-year interim extension is in fact quite short -- possibly unreasonably short. A freeze, however, is in the public interest to maintain the regulatory status quo, while the pending rulemaking allows the Commission to coordinate with the Joint Board and complete separations reform.³⁰

For price cap carriers, separations has indeed become obsolete. After rates have been initialized, separated cost data is not used to set rates. As the Commission noted in the *AT&T Forbearance Order* and the *Verizon/Qwest Forbearance Order*, there is no longer any "direct link between regulated costs and prices."³¹ However, to the extent anyone might be concerned about potential misallocation of costs between jurisdictions

²⁹ NPRM at ¶¶ 10-11.

³⁰ The Commission need not refer the proposed extension to the Joint Board. The freeze is temporary, and it is wholly consistent both with the Joint Board's earlier recommended decision and with the Commission's prior policy on separations.

³¹ *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*; *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 at ¶ 11 (2008) ("*AT&T Forbearance Order*") (granting AT&T forbearance from the separations requirements, among other rules), *pet. for recon. pending, pet. for review pending*, *NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir. filed June 23, 2008) ("*AT&T Forbearance Order*"); *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*; *Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket Nos. 07-204, 07-273, Memorandum Opinion and Order, FCC 08-271 at ¶ 27 (rel. Dec. 12, 2008) (extending forbearance from separations requirements to Verizon and Qwest), *pets. for recon. pending* ("*Verizon/Qwest Forbearance Order*").

by rate of return carriers until reform is completed, then maintaining the stability and regulatory certainty of the existing freeze will let carriers make investment decisions without worrying that reverting to the old rules would create dramatic changes in cost recovery requirements. Failing to extend the freeze could lead to deferring of investment decisions for non-Bell ILEC operations. It also would create a sudden cost shift that would be especially problematic for rural carriers and rate of return carriers.

Extending the freeze also avoids needless and pointless regulatory costs, as the Commission has previously recognized.³² Regulatory requirements are a genuine burden. Re-imposing the old separations rules would require substantial, incremental resources across several departments and all local operating companies, imposing annual regulatory costs in the millions.³³ Failing to extend the freeze would impose all those costs and more -- all for a rule that the Commission has found no longer makes sense, has already considered eliminating, and likely will render unquestionably obsolete through comprehensive intercarrier compensation and universal service reform.

The Commission cannot treat such regulatory costs lightly. Over the last decade, competition has intensified. While that means consumers have more choices -- choices of provider and of technology -- it also means ILECs have been losing lines. ILECs nationwide saw access lines decline by 9.9% in 2009, followed by similar declines in

³² *2001 Report and Order* at ¶ 17.

³³ These pointless regulatory burdens would also consume resources that subject ILECs could invest in extending the reach and capability of broadband-capable networks. Congress directed the Commission and state commissions to encourage deregulation -- notably including price cap regulation and regulatory forbearance -- to “remove [such] barriers to infrastructure investment” and so “encourage the deployment ... of advanced telecommunications capability to all Americans.” 47 U.S.C. § 157 nt. (codifying section 706 of the 1996 Act).

2010.³⁴ Most ILECs have lost well over one third of their access lines since the freeze was first adopted. Fewer lines and lower local revenues make such regulatory costs a greater burden for ILECs than ever, made even worse by a serious economic recession. Meanwhile, ILECs' competitors are not subject to similar rules.

The separations compliance task has actually become more difficult today. After nearly a decade with the freeze, the Commission understands that “[m]any carriers no longer have the necessary employees and systems in place to comply with the old jurisdictional separations process and likely would have to hire or reassign and train employees and redevelop systems for collecting and analyzing the data necessary to perform separations.”³⁵ The Commission can anticipate that ILECs would be unable to meet the obligation on a timely basis if the Commission failed to extend the freeze at least the one year proposed in the NPRM. ILECs have not expected that these rules would be abruptly re-imposed, through inaction, without extending the freeze until reform is completed or until separations requirements have been rescinded altogether. This reasonable expectation can only have been reinforced by the Commission's forbearance orders removing the separations requirements altogether from the three largest ILECs.³⁶

³⁴ See JSI Capital Advisors, *Phone Lines 2009* (2009) at 6.

³⁵ 2010 Order at ¶ 12. See also NPRM at ¶ 11; 2009 Report and Order at ¶ 12; 2006 FNPRM at ¶ 23 (acknowledging this same concern).

³⁶ NPRM at n.2.

The Commission expressly found these requirements are unnecessary and warranted forbearance for the BOCs.³⁷ The Commission and the Joint Board have recognized for a decade that the current separations rules are obsolete and need radical overhaul, because the world has changed. That change has only become more apparent and dramatic in the years since. Instead of a system of local monopolies, today's telecommunications and information services industry consists of a wide range of competing service providers, competing networks, and competing technologies. The marketplace, the technology, and Commission policy have all moved on.

The National Broadband Plan shows how plainly the environment has changed. In the meantime, having otherwise failed to complete separations reform, the Commission would be acting unreasonably if it did not extend the freeze at least one year. Nothing has happened that could possibly be cited to justify allowing the freeze to come to an end. As the NPRM tentatively concludes, "extending the jurisdictional separations freeze on an interim basis provides incumbent LECs a reasonable method to apportion costs."³⁸

The NPRM provides ample justification for continuing the freeze indefinitely, let alone the single year it proposes. The Commission should extend the current separations freeze indefinitely until it completes separations reform. It should prevent states from imposing any new or different cost allocation requirements.

³⁷ *AT&T Forbearance Order* at ¶ 12 (granting AT&T forbearance from the separations requirements, among other rules); *Verizon/Qwest Forbearance Order* at ¶ 27 (extending forbearance from separations requirements to Verizon and Qwest).

³⁸ NPRM at ¶ 11. *See also 2009 Report and Order* at ¶ 12.

III. CONCLUSION

CenturyLink and Qwest support the NPRM's tentative conclusion that the separations freeze should be extended. Although the NPRM proposes a one-year extension, CenturyLink and Qwest believe an indefinite extension would be both more appropriate and in the public interest. In either case, during the time allowed by the freeze, the Commission can take steps to complete reform of the separations process and move forward with comprehensive intercarrier compensation and universal service reform.

Respectfully submitted,



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